Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
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Policies and Rules Concerning)
Children's Television Programming) MM Docket No. 93-48
)
Revision of Programming Policies)
for Television Broadcast Stations)

REPLY COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS AND THE PUBLIC BROADCASTING SERVICE

The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") (hereinafter collectively referred to as "Public Television") submit these joint reply comments in response to comments on the "sponsorship" feature of the proposal by the Federal Communications Commission ("Commission") to strengthen the functioning of the children's television marketplace.

The overriding concern of those opposing sponsorship is that broadcasters not be permitted to evade or diminish their obligations under the Children's Television Act of 1990 ("Act" or "CTA") to provide educationally effective children's programming on their own air.[1] What many commenters have loosely characterized as "sponsorship" actually

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1 See, e.g., Comments of Children's Television Workshop ("CTW"), Center for Media Education, et al. ("Center for Media Education"), Office of Communication, United Church of Christ ("OC/UCC"), Children Now, and Cosmos Broadcasting Corporation, et al.; see also Comments of Children's Television Resource and Education Center ("C-TREC") (supporting the concept of sponsorship, but raising concerns about unintended effects of the proposal).

embodies two discrete issues: (1) the extent of each broadcaster's obligation under the Act to serve the educational and informational needs of children; and (2) implementation of the Act's provision permitting a broadcaster to receive license renewal credit for its efforts to sponsor qualifying children's programming on other television stations in its market.[2]

Under the Act, all broadcasters have an affirmative, non-delegable obligation to devote some portion of their broadcast day to serving the educational and informational needs of children.[3] At license renewal, the Commission must satisfy itself that the broadcaster has fulfilled this obligation in a manner that serves the public interest and justifies its continued operation of a broadcast station. Whatever clarification of that obligation may result from this proceeding, it cannot relieve any broadcaster of its statutory responsibility to serve the needs of children with educationally effective programming on its own air. Public Television's comments, which focus on the second issue—implementation of the Act's sponsorship authority—should not be read to suggest otherwise.

Congress has given the Commission authority to consider sponsorship efforts that are "[i]n addition to" the licensee's own children's programming,[4] but the Commission retains discretion about how to implement this authority. Some commenters are concerned that sponsorship will provide a

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2 Section 103(b)(2) provides that, at license renewal, the Commission may consider "any special [nonbroadcast] efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children." 47 U.S.C. § 303b(b)(2).

3 Section 103(a)(2) requires the Commission to consider the extent to which a licensee "has served the educational and informational needs of children <u>through the licensee's overall programming</u>" before granting any application for renewal of a television broadcast license. 47 U.S.C. § 303b(a)(2) (emphasis added).

4 Section 103(b) of the Act, 47 U.S.C. § 303b(b).

loophole for broadcasters seeking to reduce their commitment to children's programming and result in a net loss, rather than a net gain, in the number of educationally effective children's programs. Public Television shares this concern, but believes that careful implementation, rather than wholesale rejection of the sponsorship concept, is the better approach.

Public Television has focused on how the Commission could implement its permissive authority to assure that sponsorship becomes a means of increasing, not decreasing, the quantity of educationally effective children's programming in the marketplace. Specifically, Public Television proposes implementation criteria that would (1) encourage broadcasters to develop regional and national sponsorship proposals; (2) provide broadcasters with the flexibility needed to overcome marketplace constraints and find ways to exploit untapped marketplace opportunities to increase the quantity and quality of children's programming; and (3) provide a rigorous benchmark against which broadcasters and the Commission could evaluate sponsorship proposals to determine whether they further the goals of the Act and, therefore, merit license renewal credit.

I. IMPLEMENTATION OF THE CTA'S SPONSORSHIP PROVISION MUST BE RESPONSIVE TO MARKETPLACE OPPORTUNITIES AND CONSTRAINTS

The Commission has indicated that one of its goals in this proceeding is to find ways to use marketplace incentives to persuade broadcasters that it is in their economic self-interest to serve the educational and informational needs of children. A sober assessment of the opportunities and constraints in the children's programming marketplace led Public Television to identify many of the same obstacles to the production and distribution of educationally effective children's programming that other commenters have identified. To address and remedy those concerns, Public Television urges the Commission to implement the sponsorship proposal in a way that will (1) permit broadcasters to aggregate program production funding—and assure distribution of the completed program—on a regional or national basis; and (2) give them the flexibility to identify and exploit other untapped market opportunities.

A. Broadcasters Should Be Encouraged To Develop Regional and National Sponsorship Proposals

Even though commercial broadcasters can and do make money airing educational children's programming, marketplace forces constrain their ability to maximize profits by doing so.[5] As the Center for Media Education details in its comments, this is because, among other factors: "advertisers are generally more interested in reaching adults than children"; [6] "the effectiveness of educational programming often entails targeting to a narrow age range, thus further limiting a show's potential audience";[7] children's educational programs "tend to be relatively expensive to produce since they are generally based on research and testing" and "less likely to generate revenue from licensing";[8] and such programs cannot compete with product-driven children's programming, which is often introduced with a pre-sold

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5 "Commenters do not believe that broadcasters will necessarily lose money showing quality children's educational programming, only that they can make more money with adult programming or children's entertainment programming that is tied to products." Comments of the Center for Media Education at 18, fn. 52.

6 Id. at 6.

7 Id. at 8-9.

8 Id. at 9; see also Comments of the Association of Independent Television Stations, Inc. ("Quality children's programming is expensive. For example, when "Beakman's World" was first marketed to Independent stations it cost over $200,000 per episode.") (Ex. B at 15).

merchandising deal and offered to stations on a "barter" basis, requiring no cash outlay, with financial incentives such as cash payments from distributors to put programs in advantageous time spots and a percentage of the merchandising revenues.[9]

The Commission has asked whether sponsorship would enable broadcasters to recapture these lost opportunity costs and increase the profitability of producing and distributing children's programming. Based on the research done by Bortz & Company, Public Television concluded, as other commenters have,[10] that purely local sponsorship arrangements are not likely to yield any significant increase in the quantity or quality of children's programming. To aggregate the funding required to produce new, educationally effective children's programming requires an approach to sponsorship that looks beyond the local market.[11]

Several commenters reinforce Public Television's view that regional or national distribution is a critical factor in funding the production and assuring the distribution of educationally effective children's programming. On one hand, the availability of regional or national distribution represents a marketplace opportunity because "[t]he opportunity costs of production and distribution are incurred in the national syndication market."[12] Another commenter, August E. Grant, a professor at the University of Texas at Austin,

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9 Comments of the Center for Media Education at 7-8 and footnotes.

10 See, e.g., Comments of CTW at 26-27, and OC/UCC at 8.

11 This is not to suggest that educationally effective children's programming cannot or should not be produced locally; it is rather to recognize the limitations of relying exclusively on the local marketplace to provide the economic incentives for broadcasters to increase the quantity or quality of their children's programming.

12 Comments of OC/UCC at 8.

confirms that the majority of stations rely on the national syndication market for their children's programming.[13] Moreover, because most syndicated children's programming is offered on a barter basis, he contends that distribution by "an established national syndication firm" is required "to clear the number of stations needed to reach the 70 percent coverage required by most barter advertisers."[14] Indeed, he sees inability to obtain regional or national distribution as a substantial constraint on efforts to increase the amount of educationally effective children's programming in the marketplace.[15]

To convert these marketplace opportunities and constraints into effective incentives for producing and distributing more hours of educationally effective children's programming, Public Television proposes that the Commission adopt sponsorship criteria that would permit, and encourage, broadcasters to develop regional and national proposals for aggregating sufficient funding to produce new, educationally effective children's programming and arranging for its broadcast distribution.

B. Broadcasters Should Be Afforded Flexibility To Exploit Any Untapped Market Opportunities

The commercial market for children's television programming is influenced by too many economic variables for the Commission to attempt to prescribe a single formula for success. The only way to discover whether sponsorship would enable broadcasters to structure new, economically

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13 Comments of Augustus E. Grant, Attachment at 3.

14 Id., Attachment at 3.

15 Id. at 1.

advantageous arrangements for producing, acquiring, and distributing more and better quality children's television programming is to give broadcasters the flexibility to apply their creativity to finding these new opportunities. As experience tells us and as the comments in this proceeding reveal, broadcasters will not pursue the sponsorship opportunity unless their economic interests can be aligned with the goal of increased and improved service to children.[16]

Public Television is aware of at least one such successful collaboration between commercial and noncommercial broadcasters on a statewide basis, soon to be expanded to a regional basis.[17] Since 1993, Wisconsin Public Television, in alliance with the Wisconsin Broadcasters Association, has been producing *Get Real!*, an award-winning half-hour educational children's show that spotlights Wisconsin youngsters who are having a positive impact on their communities and that presents information on science, geography and other topics in an entertaining way. *Get Real!* is the first regular series in the nation to air simultaneously on public and commercial television.

The approach that works in Wisconsin and the upper Midwest may or may not be the best approach elsewhere in the country. The Wisconsin stations' experience demonstrates, however, that a broader grouping of stations can aggregate the funding and distribution resources required to

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16 The Walt Disney Company ("Disney"), for example, candidly admitted that it "is committed to continuing its production of [educationally effective] programming so long as the revenues generated from such programming are sufficient to address the necessary production and distribution costs . . . ." Comments of Disney at 1. Meredith Corporation stated that "[b]ecause the economics of the marketplace do not make core programming lucrative, broadcasters will have a strong incentive to broadcast the bare minimum of children's programming and no more." Comments of Meredith Corporation at 15.

17 Plans for the 1996-97 season of *Get Real!* include expanding the program into a regional series by adding Illinois, Iowa, Michigan, and Minnesota to its Wisconsin base.

further the goals of the CTA and provide a significant new program service to children. In implementing the CTA's sponsorship provision, the Commission should give broadcasters the flexibility and encouragement to develop equally creative and effective sponsorship proposals.[18]

II. THE COMMISSION SHOULD ADOPT RIGOROUS CRITERIA AGAINST WHICH TO EVALUATE THE EFFECTIVENESS OF SPONSORSHIP PROPOSALS IN INCREASING THE QUANTITY OF EDUCATIONALLY EFFECTIVE CHILDREN'S PROGRAMMING

Public Television has proposed that the Commission adopt criteria for evaluating and crediting sponsorship proposals that are specifically designed to address the kinds of concerns raised by other parties to this proceeding. For example, a number of commenters express concern that the sponsorship provision of the CTA not be implemented in a way that would permit commercial broadcasters to fund existing children's programming on public television.[19] They aver that this could result in a net decrease in the quantity of children's programming in the marketplace. C-TREC paints the following scenario:

> Suppose that a local PBS station has an abundance of core programming for children (as most do). However, federal grants and pledge drives have returned fewer and fewer dollars to the station causing belt tightening but not program cancellations. Under the program sponsorship plan a local licensee(s) agrees to sponsor one (or more) programs. Through this sponsorship

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18 Public Television disagrees with CTW's suggestion that public television stations should not be permitted to act as host stations under any sponsorship program that the Commission might implement. There is no indication in the legislative history that Congress intended to exclude public television licensees from the sponsorship provision of the Children's Television Act. On the contrary, the legislative history is replete with praise for public television's ability to produce the kind of educationally effective children's programming that the Act is designed to encourage. It would be a serious mistake not to take advantage of that expertise.

19 See Comments of CTW, OC/UCC, Center for Media Education, and C-TREC.

> agreement the "host" PBS station has some of its programs underwritten and still has a surplus of children's shows needed to meet its core programming requirement. Unfortunately the net result of this sponsorship is no new core programming. [20]

This is precisely the risk that Public Television foresees if the Commission fails to adopt criteria clarifying how it intends to implement the sponsorship provision. While this scenario might yield some slight financial benefit to individual public television stations, it would do nothing to further the overarching goal of the CTA. For that reason, Public Television emphasized that "[t]he principal criterion should be whether the sponsorship proposal will further the goal of the CTA by *increasing the quantity of educationally effective children's programming available in the marketplace.*"[21]

Public Television also shares the concerns expressed by the Center for Media Education and Children's Television Workshop that sponsorship not become a device by which broadcasters would spend less money on production of children's programming, leading to a decline, rather than an increase, in the quality of such programming. To forestall precisely that result, Public Television has proposed that the Commission require licensees seeking sponsorship credit to demonstrate that their proposal represents an increased financial commitment to the production and broadcast of educationally effective children's programming.

As noted above, implementation of the Act's sponsorship provision cannot diminish any broadcaster's existing statutory obligation to serve the

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20 Comments of C-TREC at 6.

21 Comments of Public Television at 12 (emphasis added).

needs of children. Adopting criteria such as those Public Television proposes, however, would assure that, to the extent a broadcaster seeks to supplement its obligation to air children's programming on its own station by sponsoring additional children's programming on another station in its market, it will not receive credit at license renewal unless that sponsorship contributes significantly to improving the quantity and quality of children's television programming. In short, a clear sponsorship policy statement, backed by coherent rules, would provide licensees with additional guidance on how to meet their responsibilities under the CTA; not permit licensees to avoid or evade those responsibilities.

Respectfully submitted,

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